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John Selden

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JOHN SELDEN.

There are no bad biographies; some are better than others. To an excellent history two things are requisite—a subject and a writer worthy of it. Unhappily such a conjunction is rarely found. Tacitus wrote a great life of Agricola, Cavendish of Woolsey and Boswell of Johnson, but with few exceptions lives of great men lack that harmony and perfection which we seek. Plutarch at times gives us a startling picture which seems to revive a personality and make it seem so like a man that we may hear and see and understand. Heine said he could not read Plutarch without wishing to take the first train and become a great man. This is always the effect of that great influence which personality wields over the minds of men. We sternly yield to a maxim of philosophy or a rule of ethics, but gladly embrace the generous counsel of a great life. For this reason biographies have ever been the favorite literature of all thoughtful men. I propose a brief essay on one who is forgotten—not in the hope that I can revive him and set him forth as he was, but in order that I may excite an interest in him and lead the reader to wish to know him.

John Selden was born under Elizabeth and died under Cromwell. His age was heroic. If to have lived during such an age and played a bold, influential and magnanimous part in a struggle which resulted in the emancipation of millions of men from the thralldom of religious and political traditions which had endured for unhappy centuries is to have deserved the veneration and grateful remembrance of men, he should not be forgotten. Yet he has passed into oblivion while many of his contemporaries, inferior to him in faculty and service, have been made immortal by the historians. Too various in his accomplishments to have become conspicuous for one only; too modest and wise to have sought high station; too gentle to have pleased fanatics; he has been neglected, while others—statesmen and philosophers and divines who affected his society and made use of his counsel—have been lauded for the very qualities in which he excelled. He was at once a scholar, lawyer, statesman, philosopher and theologian; and great in every character. His modesty, sincerity and charm were such that none could resist his influence and all delighted in his companionship. He was a member of Raleigh's club which met at the Mermaid, where words were heard

“So nimble and so full of subtle flame
As if that everyone from whom they came
Had meant to put his whole wit in a jest.”

The greatest of poets was his familiar associate, and it was even said in praise of Shakespeare that he lived in habits of intimacy with Selden. Johnson wrote in eulogy of him. He was also intimate with all the great lawyers of his time: Bacon, Coke, Chief Justice Rolle and Lord Keeper Littleton, of whom it was said:

“It was the constant and almost daily course of those great traders in learning to bring in their acquests as it were in a common stock by natural communication, whereby each of them in a great measure became the participant and common possessor of the others’ learning.”

Clarendon, the great minister of Charles, said of Selden:

“In his conversation he was the most clear discourser and had the best faculty of making hard things easy and of presenting them to the understanding, of any man that hath been known. He was a person whom no character can flatter in any expressions equal to his merit—of stupendous learning in all kinds and in all languages, that a man would have thought he had been entirely conversant among books and had never spent an hour but in reading; yet his humanity, courtesy and affability were such that he would have been thought to have been bred in best courts, but for his good nature, charity and delight in doing good.”

In a dedicatory preface a poet writes:

“Go little book and kindly say
Peace and content by night and day
Unto my noble Selden, greet,
His gentle hands, his knees and feet
In such fair fashion as not he
Deem any feignedness in me.”

As a lawyer, Selden won highest distinction at the bar. He defended Hampden in the case involving the legality of ship money,¹ enforced a judgment against a king, and defied the usurped authority of the Court of High Commission when its power was deemed impregnable.² He was also the author of many treatises, among them that

¹ For this statement, which flatly contradicts that in the sketch in the *Encyclopaedia Britannica*, the writer claims to have found high authority, but we have been unable to verify it from the available sources. Ed.

² He was consulted alike by the commons on their rights and by the lords on their privileges,—a remarkable testimony not only to his learning, but to his freedom from party bias.

of *Mare Clausum* which laid a legal foundation for England's most presumptuous yet most necessary arrogance.

As a member of Parliament, he helped to frame the Petition of Right and the Solemn Remonstrance. His argument vindicated the privileges of Parliament against the usurpations of the Crown, and his opposition to tyranny and the example which he afforded by his resistance, helped to establish them. He shared in the responsibilities of the Long Parliament, and suggested many remedies for its grievances. Judicious, however, rather than ardent, he mitigated the asperities and cruelties of his associates and was ever inclined to allow to others that freedom of opinion and conduct which he claimed for himself. People in distress resorted to him. He was always ready to defend the oppressed, even against those whom he called his friends.

He was also a delegate to the General Assembly which framed the Thirty-nine Articles of the Presbyterian Church. Although he could not approve, he would not oppose a body of doctrine which seemed to reconcile so many and so various opinions. He said of it:

“They think they have agreed upon 39 articles, yet if any be separately examined I know they cannot agree on two.”

His mind and learning rather inclined him to battle against the injurious prejudices of his time than to substitute for them others no less narrow even if less abhorrent to reason. He wrote a treatise to show that the prerogatives and offices of the clergy were not *jure divino*, and refused to allow elders an infallibility which they denied to councils. He agreed with Milton that new presbyter was but old priest writ large. The friend of Hooker rather than Laud, of Cromwell rather than Henderson, of Clarendon rather than Wentworth, he was more inclined by nature to understand than hate his fellows, and so, by reason of his large liberality and complete and generous education he offended many and was suspected by a few. None, however, who came near him could ever resist the argument of his character, and in the end he was praised and trusted by all whom he opposed.

A brief outline of his life may now be found among the forgotten books of old libraries. We may learn that he was a graduate of Oxford, a student of law at the Inns of Court, a practicing lawyer, a lecturer in the school; but he was not by any means a mere lawyer. He said over and over again,

"The saying that the Lady common law must lye alone
hath never wrought with me,"

and in this saying we find the clue to his infinite variety. He loved not law less, but general understanding more, and reached beyond the narrow and crabbed principles of a perverted and technical science to those broad and general considerations of human character and human experience which lawyers are ever apt to scorn.

He was never the victim of any system or doctrine, for he always believed that truth was a thing, like justice, which cannot be confined. Mingling on terms of intimacy with all the great men of a very great era, he became perhaps by habit and association impatient of tradition and intolerant of senseless authority. His scholarship enabled him to explore all origins and to understand the evolution of legal, political and religious traditions;³ and, having perceived their origins and traced their development, he was never able to accept the current but temporary interpretations of any law, literature or religion. He was firmly persuaded that the science of justice involved a knowledge of human nature and rested upon human nature; that law was made for men and not men for law; that righteousness was an attribute of God and that although some judges might attain to fair dealing, all judgments were but guesses at truth fortified by force. From his wisdom proceeded his magnanimity. He neglected nothing which might teach him to understand his fellows and forgive them.

John Selden lacked a worthy biographer. We must, therefore, look to a small collection of his sayings preserved by his secretary. These *aurea dicta* were noted down and preserved by the assiduity of one who admired him, and they contain so much of his philosophy as to reveal his personality and culture. Coleridge, the poet, said of them:

"There is more weighty bullion sense in this book than I ever found in the same number of pages of any uninspired writer. Excellent! O, to have been with Selden over a glass of wine!"

In speaking of the French aphorists, Dr. Johnson said:

"A few of them are good, but we have a book of that kind better than any of them, Selden's "Table Talk."

³"A man of colossal acquirements and singularly noble character, was John Selden, before whom all the scholars of the Jacobean age bowed down as to their monarch in letters." Garnett & Gosse, *English Literature*.

It was finely said of another that the very dust of his mind was pure gold. These sayings of Selden are not less precious. Unlike the maxims of the French, they are at once acute and wide; they have less to do with motives of individuals, which observation and introspection discover, than with the broader considerations of general policy which govern societies and social institutions. Johnson's *Timber or Discoveries* is a book worthy to be compared with them, but Johnson gleaned from others as well as noted his own opinions, and his notebook lacks the variety of Selden's. The poet was concerned with style, manner, thinking and the conduct of writers and men of letters; Selden touches upon social traditions and his finger leaves a trail of light which helps us to understand. When King James I. rebuked Parliament for its impertinent interference with the things that pertained to him and God, John Selden remarked:

"A king is a thing men have made for quietness' sake,
just as in a family one is appointed to cook."

He added:

"The king can do no wrong, that is, no process can be granted against him."

These things may sound like banalities now, but when they were uttered they might have imperiled a man's life or provoked his imprisonment in the Tower. He not only opposed the blind pretensions of a mad autocracy, but the blind bigotry of all systems of religion. He said:

"Most men's learning is but history taken up. If I believe some tenet because another has said so, that is but history."

"'Tis a vain thing to talk of a heretic, for a man from his heart can think no otherwise than he does."

"'Twas an unhappy division between faith and works, just as in a candle I know there is both light and heat; but yet put out the candle and they are both gone."

"The Pope is infallible where he hath power to command."

Of a certain maxim of law he said (and it is interesting to observe that we have adopted that maxim as the motto of this State):

"There is not anything in the world more absurd than *Salus populi suprema lex esto*, for we apply it as if we ought to forsake the known law, when it may be most for the advantage of the people."

Some humble people will be grateful to him for the following:

"We take care what we speak to men, but to God we say anything. Prayers should be short, without giving God Almighty reasons."

I do not mean to show by my quotations the vigor of his thinking but the flavor of the man. Who likes not his taste may set him aside, but all modest people who have been afflicted by authority will desire to know him better. In him they will find that which emancipates their souls from the yoke of tradition and enables them to pardon errors which they understand and have been victims of; to avoid pitfalls which lie in the paths of eager feet hurrying to innovations; and to become wiser, and more courageous in wisdom. After reading Selden we carry a lantern to show us a way not to truth but away from error, fanaticism, hate, vanity, toward that comfortable toleration of men's imperfections, our own included, which alone is sane and wise and reconciling. As he shows us error, it is a thing human and therefore pardonable, yet it can no longer have dominion over us. The French aphorists make us feel superior, tolerant, perhaps but nevertheless odious; Selden teaches humility—not blind but vividly-seeing humility. He is more like Erasmus than Luther; more like More than Solomon.⁴ An hour with him is an hour of keen, eager, surprising delight, such as may be got in the animated talk of a charming and superior companion. His life helps his influence. What his sayings do for the brain his example does for the heart.

We who are lawyers should know how to value one who was also a lawyer. He had the learning, industry and eloquence which we chiefly admire, and he had that to which all lawyers should aspire but few attain—a broad, illuminating, general culture which enabled him to play a worthy and useful part in every civic and political crisis of an eventful period; to be the friend and intimate associate of poets, philosophers and statesmen; and to achieve distinction among the greatest men of a time which produced more great men than any era which preceded or followed. We who live busily among men of business, immersed in petty affairs, may find in his life and sayings a point of view broad, invigorating and inspiring.

⁴In his essay on Lessing, Lowell says "the firm tread of Selden's mind was like Lessing's."

Selden's sayings are better—that is, more interesting—than his works. In his talk he was sharp and incisive, whereas he wrote like a Latin scholar, turgidly and artificially, according to an un-English idiom. We who are not obsessed by the heresies and follies of his time and do not need an argument to show us the absurdities and errors which he attacked, find it hard to follow the ponderous proof which he insists upon marshaling for our instruction. But his talk is such talk as you might hear after dinner, when clever men assemble over their cigars—more brilliant perhaps, but of the same sort and about the same subjects. If we do not agree with him, we like his way of saying things, and enjoy his companionship. He is, perhaps, less agreeable than Dr. Johnson, for we can understand Dr. Johnson better. Boswell gives him a proper setting and shows his mannerisms; and these we lack in "Table Talk." One cannot quite forget that he is *reading* the Table Talk, but we *listen* to Dr. Johnson. Liking the old fellow, we confess his sincerity even when he is baldly wrong; his rudeness is surprisingly pleasant; we dare to differ from him, for he cannot retort crushingly. But Selden eludes us. We can perceive only so much of the man as style reveals, and we are continually saying with Coleridge, "O! for an hour with him over a glass," in order that we might pierce the veil and see the face. What we know of him is like the reflection in a mirror—vivid but unsatisfying. A man of whose friendship Shakespeare was proud must have been a person; a free-thinking friend of Laud must have been more than an infidel; the associate of Bacon was no mean scholar; the friend of many great men must have had many various and fine qualities; but all these things are hid from us. We have a sheaf of his *dicta, obiter* perhaps, precious enough, but as unsatisfying as the crumbs which fall from the feast. They make us wish for more, but however avidly we crave we cannot be gratified.

ISAAC H. LIONBERGER.